

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

EMMANUEL O'HARA,

Petitioner,

v.

**CIVIL ACTION NO.: 3:24-CV-59
(GROH)**

MELISSA BAYLISS,

Respondent.

**ORDER DECLINING TO ADOPT REPORT AND RECOMMENDATION
AND GRANTING THE PETITIONER'S MOTION
ORDERING THE RESPONDENT TO SHOW CAUSE**

Currently before the Court is a Report and Recommendation ("R&R") entered by United States Magistrate Judge Robert W. Trumble on September 13, 2024. ECF No. 8. Pursuant to Rule 2 of the Local Rules of Prisoner Litigation Procedure, this action was referred to Magistrate Judge Trumble for submission of an R&R. Therein, Magistrate Judge Trumble recommends that this Court dismiss the Petitioner's Petition. The Petitioner timely filed objections to the R&R on September 19, 2024. ECF No. 9. Accordingly, this matter is now ripe for adjudication.

Having reviewed the filings in this matter, the Court **SUSTAINS** the Petitioner's Objections to the R&R. This Court has explained that a prisoner is "under no obligation to plead that he exhausted his administrative remedies." Harper v. Wolfe, 3:22-CV-75, ECF No. 22. The Supreme Court has plainly stated "that failure to exhaust is an *affirmative defense* under PLRA" and that "inmates are not required to specially plead or demonstrate exhaustion in their complaints." Jones v. Bock, 549 U.S. 199, 204 (2007); see also Moore v. Bennette, 517 F.3d 717, 725 (4th Cir. 2008). Additionally, the PLRA's

exhaustion requirement “does not operate as a bar to [a] district court’s exercise of its subject-matter jurisdiction.” Anderson v. XYS Corr. Health Servs., Inc., 407 F.3d 674, 678 (4th Cir. 2005). And although, “[a] court may *sua sponte* dismiss a complaint when the alleged facts in the complaint, taken as true, prove that the inmate failed to exhaust his administrative remedies[.]” this should only be done in rare cases. Custis v. Davis, 851 F.3d 358, 361 (4th Cir. 2017).

Therefore, the Court **DECLINES TO ADOPT the R&R**. ECF No. 8. The Court also **GRANTS** the Petitioner’s Motion for an Order to Show Cause [ECF No. 7] because the undersigned has made a preliminary review of the petition and finds that summary dismissal of the same is not warranted.

Accordingly, the Respondent is **DIRECTED** to file an answer or responsive pleading within ten (10) days from the date of this Order to show cause why the writ should not be granted.

The Clerk of Court is **DIRECTED** to add Assistant United States Attorney Christopher J. Prezioso as counsel for the Respondent and to provide a copy of this Order to Mr. Prezioso. The Clerk is further **DIRECTED** to mail a copy of this Order to the pro se Petitioner by certified mail, return receipt requested. Finally, the Clerk is **DIRECTED** to **REASSIGN** this matter to Magistrate Judge Trumble.

DATED: September 26, 2024


GINA M. GROH
UNITED STATES DISTRICT JUDGE